IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 220 of 1992

Judgement reserved on: 20.4.2007.

Date of decision: 1.5.2007

State of H.P. **…Appellant.**

Versus

Surjeet Singh & anr. **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the appellant: **Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S.Nainta, Deputy Advocate General.**

For respondents : **Mr. Ajay Sharma, Advocate.**

Surjit Singh, Judge.

This appeal by the State is directed against the judgement of the Sessions Judge, whereby respondent Surjeet Singh and his mother Sahib Kaur, who were sent up for trial for offences, under Sections 302, 436, 380, 201 and 411 IPC, have been acquitted. The order of acquittal is alleged to be not based on the correct appreciation of evidence on record.

2. First the prosecution version may be noticed. There lived a man by the name of Sumer Singh, in village Bagri. He had two wives. From the first wife, he had two sons and a daughter. From the second wife, he had only one son Jit Singh (PW 2). Respondent Surjeet Singh is one of the two sons from the first wife and the respondent No. 2 is the deceased's first wife. The second son of the deceased from respondent No. 2, i.e. his

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Whether reporters of the local papers may be allowed to see the judgment?

first wife, lives in Solan. He is PW 3 Amar Singh. Jit Singh (PW 2) the son from the second wife and the daughter of the deceased from the first wife named Aas Kaur live in village Bagri. Respondents live in Dagsai, which is one and half hour walk from village Bagri.

3. The deceased was a moneyed man and had landed property also. He gave ten Bighas of land to PW 2 Jit Singh, the son from the second wife during his life time. With regard to remaining land, he executed a will in favour of respondent No.1. Sometime after the execution of the will, Sumer Singh started proclaiming that respondent No. 1 had been wasting money and so he would be revoking the will executed in his favour. He used to live in his house in village Bagri all alone. He had employed a Gorkha, named Harka Bahadur (PW 7), whom he provided shelter at a distance of about 100 yards. The Gorkha lived in the shelter alongwith his wife Bimla (PW 6).

4. On 6.2.1991, Harka Bahadur, as per instructions imparted to him on the previous evening left for village Rehuin early in the morning for making purchases. Around 10.00 or 10.30 or 11.00 a.m., PW 6 Bimla Devi went to the house of Sumer Singh to attend to the cattle. She noticed that smoke was coming out of Sumer Singh's house. She went to the house of one Krishna and informed her what she had seen. The two together went to the house of Aas Kaur the daughter of Sumer Singh deceased and informed her that there was smoke rising from the house of Sumer Singh. Aas Kaur deputed her son Kirpal Singh (PW 11) and Arjun to find out the cause of smoke. They went and saw that everything in the house had been burnt. Kirpal Singh then informed PW 2 Jit Singh and respondent Surjeet Singh telephonically. Jit Singh was those days working as a carpenter at the house of respondent Surjeet Singh at Dagsai.

5. After sometime, PW 2 Jit Singh and respondent Surjeet Singh reached the house of Sumer Singh. They found that the body of Sumer Singh below neck had been almost completely burnt. His face and head

were partly burnt. Police was informed. The third son of Sumer Singh, who lived at Solan, namely PW 3 Amar Singh was also apprised of the incident by the respondent and PW 2 Jit Singh. Police reached the spot in the evening and secured the spot.

6. Next morning respondent Surjeet Singh made a statement to the police, which was recorded under Section 154 of the Code of Criminal Procedure. The same is Ex. PAK. Per contents of this statement, the deceased had kept Guru Garanth Sahab in the upper storey of his house, which was in "Parkash" state, even though the deceased used to bring it into resting "Sukhasan" state everyday around sun-set and this indicated that he had been done to death by someone before sun-set on the day preceding 6.2.1991. It was also reported that it appeared that the deceased was killed by means of lethal weapon, when he was lying on Charpai and later on the bed had been set on fire by sprinkling kerosene.

7. Case was formally registered on the basis of this statement. During the course of investigation it was found that the deceased had sold a house situated at Dagsai to his grand daughter (daughter's daughter) PW 10 Gurdeep Kaur, for Rs. 10,000/- on monthly instalments and intended to execute the sale deed on 11.2.1991. The respondents were allegedly opposed to the sale of the house. Investigating Agency also found that the deceased had threatened to revoke the will executed in favour of respondent No.1. Thus the respondent No.1 had a motive to kill the deceased, his father. The statement made by respondent No.1 to the police that the deceased had been done to death by being hit by a lethal weapon on the head while he was lying on the bed and later on his body was set on fire by sprinkling kerosene on the bedding was also considered to be a circumstance pointing to the involvement of the respondent. The respondent, was, therefore, taken into custody. While in police custody, he made a disclosure statement leading to the recovery of a "Basola" which was having stains of blood and a few hair and leaves of grass struck to it.

Chemical Examiner to whom this “Basola” was sent reported that it bore stains of human blood. Mohan Lal (PW 12) informed the police that on 6.2.1991 around 5.00 or 6.00 in the morning, when he was present at a public tap in village Gandhi Gram, he saw the respondent coming from Bagri side and going towards Dagsai. Search of the house of the respondent was conducted and silver ornaments Ex. P-19 to Ex. P-23, were recovered, which were identified to belong to the second wife of the deceased named Lachhmi, who had pre-deceased the deceased and after her death these ornaments used to be with the deceased. Smoky smell of human flesh was felt by the police officer and the witnesses of recovery of these ornaments when, bundle containing these ornaments was opened. One sweater of respondent No.1, was found lying in the room adjoining to the room where the burnt dead body was lying. The sweater had marks of burning.

8. On the completion of the investigation, respondents were challaned. Accusation that was made against respondent No.2 was that she had received from respondent No. 1, the silver ornaments knowing that the same had been removed from the house of the deceased Sumer Singh after he was killed. She was also accused of concealing the evidence of murder with a view to screening the offender, i.e. respondent No. 1, by having kept concealed the ornaments in a trunk in her house.

9. Respondent No.1 was charged with the offences, under Sections 302, 436, 380 and 201 IPC. Respondent No. 2 was charged with the offences, under Sections 411 and 201 IPC. On their pleading not guilty, they were put on trial. Prosecution examined a number of witnesses to bring the charge home to the respondents. Respondent No.1 denied that he had gone to village Bagri on the night intervening 5th and 6th February, 1991. He also denied having stolen the silver ornaments or some Fixed Deposit Receipts and papers of investment of money, like Kisan Vikas Patras etc. from the house of his father. He also denied that his father had

threatened to revoke the will. It was also denied that he was opposed to the sale of the house by his father in favour of his grand daughter Gurdeep Kaur, examined as PW 10.

10. Respondent No. 2, admitted the recovery of silver ornaments from her house. She also admitted the recovery of Kisan Vikas Patras and FDRs etc. But claimed that the deceased himself had given the ornaments to her and FDRs and Kisan Vikas Patras to respondent No.1. Trial court concluded that the case was based on circumstantial evidence and that none of these alleged circumstances had been proved. Consequently, both the respondents were acquitted.

11. We have heard the learned Additional Advocate General as also the defence counsel. According to the learned Additional Advocate General, respondent No.1 had the motive to kill the deceased. His further submission was that respondent No. 1, had been seen coming from the side of village Bagri in the early hours of 6.2.1991. It was further submitted that silver ornaments and FDRs etc., which were supposed to be with the deceased, were recovered from the house of respondents. Next circumstance pointed by the learned Additional Advocate General was the recovery of the weapon of offence at the instance of respondent Surjeet Singh. It was also submitted that clothes of respondent Surjeet Singh had been recovered from the house of deceased. Also, it was submitted that the conduct of the respondent Surjeet Singh indicated that he knew the manner in which the deceased was killed and then his dead body was burnt inside his house.

12. As regards first submission that the respondent No.1 had the motive to kill the deceased, the evidence on record, no doubt, proves that the deceased had made a will in favour of respondent No. 1, but there is no evidence that the deceased after executing the will got annoyed with respondent Surjeet Singh on account of his having allegedly started squandering and wasting the money and the assets and so he had started

proclaiming that he would be revoking the will. There is absolutely no evidence that respondent had started wasting the money or the properties of the deceased. If that is so, there could not have been any cause for the deceased to get annoyed with respondent No.1, especially when the allegation is that he got annoyed because of the alleged squandering of money and wasting of property by respondent No.1. Secondly it has come in evidence that though the deceased had once called his son Amar Singh and daughter Aas Kaur to whom nothing had been given, under the will or otherwise, and offered to give them 10 Bighas land each , but they declined the offer. A reference in this behalf may be made to the testimony of PW 2 Jit Singh, the step brother of respondent No.1. The witness stated that once after executing the will, the deceased had called all his sons and daughters and proposed to give them 10 Bighas of land each, but his brother Amar Singh (PW 3) and sister Aas Kaur refused to accept any land. PW 2 Jit Singh had already been given 10 Bighas of land, per his own statement. The evidence on record thus does not establish that the deceased had a change of mind after executing the will and he had been planning to revoke the will and that made respondent No.1 apprehensive of losing the property and that was the motive to kill the deceased.

13. As regards the second aspect of the motive, viz. the respondent was opposed to the sale of a house at Dagshai by his father to PW 10 Gurdeep Kaur and with a view to preventing him from executing the sale deed, which he proposed to execute on 11.2.1991 he killed him, suffice to say that there is absolutely no evidence that respondents were opposed to the sale of the house in favour of PW 10 Gurdeep Kaur.

14. As regards appellant's counsel submission that respondent No. 1 was seen coming from the village Bagri and going towards Dagsai in the early hours of 6.2.1991 at a place called Gandhi Gram, attention of this Court was drawn to the testimony of PW 12 Mohan Lal, who testified that on 6.2.1991, around 5.00 or 6.00 a.m., when he was present at a public tap

in village Gandhi Gram, he saw respondent No.1 coming from Bagri side and going towards Dagsai. The witness was declared hostile by the prosecution, as he did not stick to another part of his statement, under Section 161 of the Code of Criminal Procedure, viz. that he had enquired from respondent No.1 as to where he was coming from and that he told that he was coming from Bagri and going towards Dagsai. He denied having stated this fact to the police. He also denied that he had any talk with respondent No.1. In the cross examination, he stated that the man he had seen looked like respondent No. 1. He further stated that the man had covered himself with a Pattu when he saw him. His saying that the man whom he saw had covered himself with a Pattu and looked like respondent Surjeet Singh gives the impression that he was not sure if the man he saw in fact was respondent Surjeet Singh. He did not deny that a nephew of respondent No.1, named Arjun Singh, looks like respondent Surjeet Singh and his height and physique are also similar to that of respondent No.1. Further more, the witness is contradicted by his previous statement, under Section 161 of the Code of Criminal Procedure, in material particulars, as pointed out above, and therefore, the prosecution declared him hostile. The witness admits that he had been prosecuted for committing offence of murder. Under these circumstances, it cannot be held that the circumstance stands fully established.

15. It is true that silver ornaments Ex. P-19 to Ex.P-23, were produced to the police by respondent No. 2 from a trunk kept in her house and the FDRs and Kisan Vikas Patras were also recovered from the house of the respondents, but it has come in evidence that second wife of the deceased, Lachhmi Devi, had pre-deceased him and after her death respondent No. 2 had been seen wearing these ornaments. Not only this, PW 2 Jit Singh, the only issue from Lachhmi Devi, the pre-deceased second wife of the deceased, in his statement admitted that the deceased had given the ornaments to respondent No. 2 after the death of his mother.

No doubt, the Investigating Officer of the case named PW 30 Tilak Raj, PW 4 Ramesh Chand and PW 5 Sada Ram, in whose presence the recovery was effected, stated that some smell of burning was felt when the bundle made of green coloured pieces of cloth containing ornaments Ex. P-19 to Ex. P-23 was opened and one of the ornaments, i.e. Chak, had some burning marks, but these ornaments were not sent to the Chemical Examiner for his opinion and no reason for this omission has been put forward. In any case, when it is stated by PW 2 Jit Singh, the son of the second wife of deceased Sumer Singh that after the death of his mother, the ornaments had been given to respondent No.2, the question of these ornaments having been stolen from the house of the deceased, after his death, does not arise. It has come in the evidence that on search of the house of the deceased currency notes of Rs. 4,000/- approximately and some golden ornaments were recovered. Now if the killer of the deceased was to carry with him the silver ornaments, there was no reason for his not carrying the cash and golden ornaments, particularly when it has come in evidence of the prosecution that ornaments and the currency notes were lying in unlocked boxes. It has also come in evidence that pieces of burnt currency notes were also found near the partly burnt dead body. This suggests that some currency notes were available with the deceased on his person which could have very early been taken away by the killer especially when the killer, is alleged to be the son.

16. As regards the recovery of FDRs and Kisan Vikas Patras, it is the prosecution's own case that the FDRs and the Kisan Vikas Patras were in the joint names of the deceased and the respondent No.1. If it is so, there is every likelihood that the FDRs and the Kisan Vikas Patras, copies Ex. PT/1 to Ex. PT/20, were with the respondent No.1, even during the life time of the deceased and to the knowledge of the deceased.

17. Dealing with the circumstance regarding recovery of weapon of offence, at the instance of respondent No.1, the learned Additional

Advocate General drew the attention of the court to the testimony of PW 30 Tilak Raj, Police Officer, to whom the alleged disclosure statement was made and who effected the recovery, as also the testimony of PW 1 Prem Dass, in whose presence respondent No.1, allegedly made the disclosure statement and got the recovery effected. No doubt, both of them testified that respondent No.1, made a statement on 19.2.1991, leading to the discovery of Basola, the weapon of offence, Ex. P-13, from a field where mustered crop was growing, but PW 2 Jit Singh, PW 3 Amar Singh and PW 11 Kirpal Singh testified that Basola, Ex. P-13 had been found lying in mustered field on 7.2.1991 and the police picked it up on the same day and carried it with them.

18. Learned Additional Advocate General argued that PW 2 Jit Singh and PW 3 Amar Singh were hostile witnesses and they had been cross-examined by the prosecution with the leave of the court and stood contradicted by their previous statements, under Section 161 of the Code of Criminal Procedure, and therefore, no reliance could be placed on their testimony qua the above facts. We do find substance in the submission of the learned Additional Advocate General. However, we see no reason to disbelieve the testimony of PW 11 Kirpal Singh, who is neither a hostile witness nor contradicted by his previous statement, under Section 161 of the Code of Criminal Procedure. Thus, the recovery of Basola Ex. P-13, allegedly at the instance of respondent No.1, is also doubtful. We may also point out that this being a case based on the circumstantial evidence, it cannot be said with certainty that Basola Ex. P-13, was in fact used to kill the deceased.

19. Regarding recovery of clothes of respondent Surjeet Singh from the house of the deceased, it has come in evidence that respondent Surjeet Singh and another son of the deceased quite often visited him and stayed there in the adjoining room. It was from that adjoining room that clothes were recovered. Reference in this behalf may be made to the

testimony of PW 1 Prem Dass, who categorically stated that a sweater, a shirt and a pant of respondent No.1 Surjeet Singh, were recovered from that room where respondent No.1 and his brothers used to stay on their visits to the house of the deceased, their father. Therefore, the recovery of the clothes of respondent No.1 from the house of the deceased cannot be said to be a circumstance pointing to his guilt. It is true that PW 1 stated that sweater was slightly burnt on the back portion. PW 30 Tilak Raj, who effected the recovery, also made a similar statement. However, this circumstance by itself cannot be taken to be a pointer to the involvement of respondent No.1 in the commission of the alleged crime.

20. It is the prosecution's own case that though the body below neck had almost completely been burnt before the fire was extinguished, the face and the head had not been completely burnt and that there was swelling on the temporal parietal region on the left side. Reference in this behalf may be made to the testimony of the doctor, who conducted the post mortem examination, namely PW 18 Dr. Lalit Gupta. It was under this swelling that the doctor, on removal of the swelling, noticed a 6 c.m. x 4 c.m. bone deep wound. It is quite likely that because of this swelling on the temporal parietal region, which the respondent is supposed to have noticed, that he reported to the police per statement, under Section 154 of the Code of Criminal Procedure, Ex. PAK, that it appeared that his father had been killed by use of some lethal weapon. His reporting that it appeared that after having been killed by use of some lethal weapon, the deceased was burnt, was also based on the facts noticed on the spot. Though the entire body below the neck had almost completely been burnt, the frame of the Charpai on which the deceased was slept was intact. There lay a lantern near the frame of that Charpai suggesting that kerosene from the container of that lantern might have been sprinkled on the bedding to burn the dead body. Such a guess could have been made by anybody on seeing the factual position on the spot and therefore, from the report, to the aforesaid

effect, lodged by respondent No.1, it cannot be gathered that he was privy to the commission of the offence of murder and the burning of the dead body.

21. In the light of the above discussed position, we see no reason to disagree with the findings and the order of acquittal recorded by the trial court. Consequently, the appeal is dismissed.

(Surjit Singh),
Judge.

May 1, 2007.
(Hem)

(Sanjay Karol),
Judge.